

the said party can get the desired relief nearer home under section 227 of the new Code from the Sessions' Court itself.

(5) For the reasons stated, this petition stands dismissed.

K.T.S.

MISCELLANEOUS CIVIL

Before Ajit Singh Bains and S. P. Goyal, JJ.*

NARAIN SINGH,—*Petitioner.*

versus

N. S. CHEEMA, P.C.S. ETC.,—*Respondents.*

Civil Writ No. 4629 of 1974

August 24, 1974

Punjab Gram Panchayat Act (IV of 1953)—Sections 5(5) (b), 13 and 13-O—Punjab Excise Act (1 of 1914)—Conviction under section 61(1) (a) for possession of illicit liquor—Whether involves moral turpitude—Such conviction—Whether a disqualification from seeking election as Sarpanch—Entries in an electoral roll—Sub-Divisional Magistrate—Whether could go behind such entries and hold enquiry into the age of a candidate.

Held, that a person in possession of illicit liquor and convicted under section 61(1) (a) of the Punjab Excise Act, 1914 cannot be said to be guilty of an offence involving moral turpitude. So far there is no prohibition imposed under any law against taking liquor, it may be an offence against the Revenue, but no morals are involved in such a conviction. It cannot be said that such a conviction could shock the moral conscience of society in general. It also cannot be said that motive for possession of illicit liquor is a base one. The word 'base' means "morally low ; low minded ; dishonourable ; disgraceful ; vile". The motive to keep in possession illicit liquor can at the most be to drink or to entertain the guests. Such a motive cannot be classified as a base one. Again, the person in possession of illicit liquor could not be considered to be of a depraved character or a person who was to be looked down upon by the society. Such a conviction, therefore, does not involve moral turpitude and is not a disqualification for seeking election as Sarpanch under section 5(5) (b) of the Punjab Gram Panchayat Act, 1952.

(Paras 3, 4, 5 and 6).

Narain Singh v. N. S. Cheema, P.C.S. etc. (Bains, J.)

Held, that under section 13-O of the Punjab Gram Panchayat Act, 1952, the election of an elected Sarpanch or Panch could be set aside if the nomination paper of any candidate had been wrongfully rejected. The entry in the electoral roll is conclusive for a limited purpose that the person is an elector. Therefore, the Sub-Divisional Magistrate could go behind the entries and hold enquiry regarding the age of a candidate. (Para 7).

Petition under Articles 226 and 227 of the Constitution of India praying that :—

- (i) *the records be summoned ;*
- (ii) *the orders of respondent No. 1 contained in Annexure P-1 be quashed by issuing writ of Certiorari, or any other writ, order or Direction;*
- (iii) *the petitioner be awarded cost of the petition ;*
- (iv) *the operation of the impugned order be stayed till the decision of the writ petition by this Hon'ble High Court.*

I. K. Mehta, Advocate, for the Petitioner.

Shri P. N. Aggarwal, Advocate, for the Respondent.

JUDGMENT

Ajit Singh Bains, J.

(1) Narain Singh, petitioner, was elected as Sarpanch of the Gram Panchayat, village Baggeke Uttar, on June 22, 1972. His election was challenged under section 13-B of the Punjab Gram Panchayat Act, 1952 (hereinafter called the Act) by Kashmir Singh, respondent No. 2, which was set aside by the Sub-Divisional Magistrate, Fazilka, on July 31, 1974, on the ground that the petitioner was disqualified from seeking election under section 5(5)(b) of the Act and from being chosen as Sarpanch as he had been convicted under section 61(1)(a) of the Punjab Excise Act, which amounted to moral turpitude. It was also held by the Sub-Divisional Magistrate that the nomination paper of Darshan Singh had been wrongly rejected by the Presiding Officer. It is against this order of the Sub-Divisional Magistrate that the present writ petition has been filed.

Mr. I. K. Metha, the learned counsel for the petitioner, raised the following contentions:—

- (a) That the Sub-Divisional Magistrate erred in holding that the petitioner was disqualified under section 5(5)(b) of the Act on the basis of his having been convicted under section

61(1) (a) of the Punjab Excise Act. His argument is that his conviction under this section does not amount to moral turpitude; and

- (b) that the Sub-Divisional Magistrate could not go behind the entries in the voters' list. Since the age of Darshan Singh was recorded as 23 years in the electoral roll of the State Legislative Assembly, the nomination papers of Darshan Singh was rightly rejected.

(2) So far as the first contention of Mr Mehta is concerned, I find merit in what he says. No doubt, the petitioner was convicted under section 61(1)(a) of the Punjab Excise Act in the year 1971 but he was released by the Magistrate under section 4 of the Probation of Offenders Act with the following observations:—

“The accused is a young man of 40 years of age and is admittedly first offender. He has been leading a good course of conduct before. It is a minor lapse on his part from the path of rectitude. Keeping these things in view I release the accused under section 4 of the Probation of Offenders Act on his furnishing bail in the sum of Rs. 500/- for a period of six months, together with the surety bond and the personal bond in the said amount. During this period, the accused shall come and receive sentence as and when called upon to do so. During this period the accused shall maintain good behaviour and keep the peace.”

‘Moral turpitude’ has not been denied either in the Punjab Gram Panchayat Act or in the Indian Penal Code. However, according to Law Lexicon of British India, 1940 Edition, at page 832, ‘moral turpitude’ has been defined as under :—

“Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (Ame. Cyc.)

Everything done contrary to justice, honesty, modesty, or good morals is done with turpitude, so that embezzlement involves moral turpitude.”

Narain Singh v. N. S. Cheema, P.C.S. etc. (Bains, J.)

(3) In *Mangali v. Chhakqi Lal* (1), the Allahabad High Court laid down the following three tests which should ordinarily be applied for judging whether certain offence did or did not involve 'moral turpitude' :—

- “(1) Whether the act leading to a conviction was such as could shock the moral conscience of society in general,
- (2) Whether the motive which led to the act was a base one, and
- (3) Whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society.”

These tests were approved by their Lordships of this Court in *Risal Singh v. Chandgi Ram and others* (2). In the present case, applying these tests and the meaning of moral turpitude as given in the Law Lexicon of British India, it is to be seen whether the conviction under section 61(1)(a) of the Punjab Excise Act of the petitioner amounts to moral turpitude. According to the facts of the Excise case, the petitioner was found in possession of about 2½ bottles of illicit liquor. There is no allegation that he was found distilling the illicit liquor nor there is any evidence to show that he had possessed that liquor in order to sell the same. It is a matter of common knowledge that in most of the rural areas in the Punjab people do take liquor. So far there is no prohibition imposed under any law against taking liquor, it may be an offence against the Revenue, but no morals are involved in such an offence. It cannot be said that such a conviction could shock the moral conscience of society in general. The society in which the petitioner lives is generally of agriculturists and labour engaged in the agricultural pursuits. Such people generally take liquor in that society. Admittedly, the petitioner was elected as a Sarpanch by a majority of the voters in the year, 1972, notwithstanding the fact that he was convicted under section 61(1)(a) of the Punjab Excise Act and released on probation under section 4 of the Probation of Offenders Act in the year 1971. If it had shocked the moral conscience of the society in which the petitioner lives, then nobody could vote for him.

(4) Second test as laid down is whether the motive which led to the act was a base one. It also cannot be said that the motive

(1) A.I.R. 1963 All. 527.

(2) A.I.R. 1966 Pb. 393.

for possession of the illicit liquor by the petitioner was a base one. The word 'base', according to the Webster's New World Dictionary, 1962 Edition, means "morally low, low minded, dishonourable, disgraceful, vile". The motive to keep in possession the illicit liquor was at the most to drink or to entertain the guests. Such a motive cannot be classified as a base one.

(5) The act of the petitioner's being in possession of the illicit liquor also does not come within the mischief of the third test. It cannot be said that on account of keeping the illicit liquor the petitioner could be considered to be of a depraved character or a person who was to be looked down upon by the society. As already observed, after committing an offence under the Punjab Excise Act, the petitioner was elected by the majority of the voters. If he was to be looked down upon there was no reason for the voters to vote for him. Keeping in view all these tests it cannot fairly be said that the offence for which the petitioner had been convicted involved moral turpitude. The petitioner is a first offender. He seems to be a popular man and the Magistrate, while releasing him under the Probation of Offenders Act had observed that the petitioner was a young man of 40 years of age and was first offender and that he had been leading a good course of conduct before and it was a minor lapse on his part from the path of rectitude.

(6) Mr. P. N. Aggarwal, learned counsel for the respondents, on the other hand, relied upon *Bansh Bahadur Singh v. S. Prasad and another* (3). It was a case of theft. Hence it can be of no assistance to the present case. Keeping in view the tests as approved by their Lordships of this Court in *Risal Singh's case* (2) (supra) and the meaning assigned to the words 'moral turpitude' in the Law Lexicon of British India, we hold that the offence under which the petitioner was convicted does not involve moral turpitude. The petitioner did not incur any disqualification under section 5(5)(b) of the Act.

(7) Coming to the second contention of Mr. Mehta that the Sub-Divisional Magistrate could not go behind the entries in the electoral roll. The fallacy of his argument is obvious. It is true that the age of Darshan Singh in the electoral roll was entered as 23 years. Under section 13-0 of the Act, the election of an elected Sarpanch or Panch could be set aside if the nomination paper of

Narain Singh v. N. S. Cheema, P.C.S. etc. (Bains, J.)

any candidate had been wrongly rejected. Therefore, the Sub-Divisional Magistrate had the jurisdiction to hold enquiry regarding age. The entry in the electoral roll is conclusive for a limited purpose that the person is an elector. It may be highlighted that section 36 of the Representation of People Act, 1950 was amended,—*vide* Act No. 27 of 1956. After the amendment, the presumption remained only that such a person was an elector. In *Brijendralal Gupta and another v. Jwalaprasad and others* (4), their Lordships of the Supreme Court held as under :—

“Under Section 36(7) a certified copy of the entry in the electoral roll shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency; but this presumption is raised for the purposes of this section and it is made expressly subject to the last clause of this sub-section, that is to say, the presumption can arise unless it is proved that the person in question is subject to any of the disqualifications mentioned Section 16 of the Act of 1950. The use of the adjective ‘conclusive’ which qualifies evidence’ is technically inappropriate because the presumption arising from the production of the certified copy of the relevant entry would *prima facie* show that the person concerned is not subject to any of the said disqualifications, but this *prima facie* presumption can be rebutted by the evidence to the contrary.”

In *Bhagwan Dass Single v. Harchand Singh and another* (5), it was held as under:—

“Age is merely a qualification for being entered as an elector in the electoral roll and it is only the name of that person who is 21 years of age that can be entered in the electoral roll. There is a clear presumption that the person whose name is entered in the electoral roll is 21 years of age. Therefore an entry in the electoral roll that the age of an elector is 20 years is pointless and no value can be attached to it. It follows that when the nomination paper is rejected merely on the basis of that entry, section 36(7) is ignored and, therefore, such rejection is improper.”

(4) A.I.R. 1960 S.C. 1049.

(5) A.I.R. 1971 Pb. & Hary. 65.

(8) In view of the principles of law laid down in these authorities and also clear provisions of the statute under which the election can be set aside, we hold that the Sub-Divisional Magistrate could hold inquiry into the matter regarding the age of Darshan Singh as entered in the electoral roll. The finding of the Sub-Divisional Magistrate is based on evidence. It is on the record that in the nomination papers Darshan Singh had given his age as 28 years but in the voters' list it was entered as 23 years. He produced his School Leaving Certificate, wherein his date of birth was shown as January 16, 1945. He also produced enrolment certificate from the Army Authorities and in this certificate his age was shown as 18 years on February 28, 1963, when he joined the Army. He had also produced the certificate before the Returning Officer and on this basis the Sub-Divisional Magistrate came to the conclusion that the rejection of the nomination papers of Darshan Singh was not proper. Since this is one of the grounds for setting aside the election, the election of the petitioner was set aside. Although the petitioner succeeds on the first point and the finding of the Sub-Divisional Magistrate is reversed so far as his disqualification for moral turpitude is concerned, but his election is to be set aside on the second ground for illegal rejection of nomination papers of Darshan Singh, respondent.

(9) No other point is urged.

(10) For the reasons recorded above, this petition must fail and the same is dismissed, but there will be no order as to costs.

K.T.S.

CIVIL MISCELLANEOUS

Before A. S. Bains, J.

RANBIR SINGH,—Petitioner.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 4869 of 1976.

September 2, 1977.

Constitution of India 1950—Art. 226—Student obtaining admission on a false Scheduled Caste certificate—Such student successfully completing the course and post examination training—Principal of the college—Whether has the authority to take action after the student has left college.

Held, that if a candidate is admitted on the basis of a false certificate and at a subsequent time it is discovered that it was false, the student can be removed from the college and all the fees and